

## IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE,	)	
	)	
Plaintiff and Respondent,	)	
	)	S037006
v.	)	
	)	
MICHAEL JAMES HUGGINS,	)	
	)	
Defendant and Appellant.	)	Alameda County
	)	Super. Ct. No. H-9225
_____	)	

### MODIFICATION OF OPINION

THE COURT:

The opinion in this case, filed on April 10, 2006 and appearing at 38 Cal.4th 175, is modified by deleting the fifth sentence of the first paragraph on page 238. As modified, that paragraph reads:

“Defendant asserts that some of the testimony falls outside the ambit of what is permitted elsewhere. For example, he argues that in *Cargle v. State* (Okla.Crim.App. 1995) 909 P.2d 806, the court questioned the relevance of testimony that the victim ‘saved the county thousands of dollars by a personal fundraising effort . . . and was thoughtful and considerate to his family . . . .’ (*Id.* at p. 829.) Under this view, he contends, it was error to allow testimony about Sarah Lees’s charitable contributions. But the testimony conformed to what the parties here agreed would be relevant. Moreover, except insofar as defendant asserts that it violated due process to admit evidence whose introduction he opposed below as substantially more prejudicial than probative (*People v. Partida*,

*supra*, 37 Cal.4th 428, 431), his constitutional claims, along with his statutory claim under factor (a) of section 190.3, are forfeited (Evid. Code, § 353) because he failed to raise them in the court below; rather, he was actively involved in shaping the scope of the victim-impact testimony and limited his objections to evidence that might be irrelevant or unduly prejudicial (*id.*, §§ 350, 352).”

This modification does not affect the judgment.